

EXHIBIT K

12/6/2004 Christensen, Brian

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF HAWAII

3
4 WAYNE BERRY, a Hawaii)

5 citizen,)

6 Plaintiff,)

7 vs.) Civil No. CV03-00385

8 HAWAIIAN EXPRESS SERVICE,) SOM-LEK

9 INC., a California) (Copyright)

10 corporation, et al.,)

11 Defendants.)

12 _____)

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14
15 DEPOSITION OF BRIAN CHRISTENSEN

16
17 Taken on behalf of Plaintiff Wayne Berry at 1132

18 Bishop Street, Suite 306, Honolulu, Hawaii, 96813,

19 commencing at 9:05 a.m., on Monday, December 6,

20 2004, pursuant to Notice.

21
22
23 REPORTED BY: JANIS K. FLOATE, RPR, CSR 254

24 Notary Public, State of Hawaii

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6 For Defendants Hawaiian Express Service, Inc.;
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8 (telephonic appearance)

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12 For Defendants Fleming Companies, Inc.; C&S
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1 For Defendants Mark Dillon, Brian Christensen,
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5
6 For Defendant Fleming Companies, Inc.:

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10
11 Also Present: Wayne Berry
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1 (Disclosure presented to Counsel.)

2 BRIAN CHRISTENSEN

3 called as a witness at the instance of Plaintiff,
4 being first duly sworn to tell the truth, the whole
5 truth and nothing but the truth, was examined and
6 deposed as follows:

7
8 EXAMINATION

9 BY MR. HOGAN:

10 Q. Good morning, Mr. Christensen. My name is
11 Timothy Hogan. I represent Wayne Berry, who is at
12 the table.

13 Would you please state your full name and
14 spell it for the court reporter.

15 A. Brian Christensen. C-H-R-I-S-T-E-N-S-E-N.

16 Q. Thank you. We're going to go over just a
17 few ground rules. First, have you ever had your
18 deposition taken before?

19 A. No.

20 Q. Let me go over it. A deposition is a
21 court proceeding, although there is no judge
22 present. The lawyers will be able to make
23 objections to questions. When you hear an
24 objection, just wait, let the objection be resolved,
25 and then generally you'll be told whether to answer

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1 the question or not.

2 A. Okay.

3 Q. You're presently represented here by Mr.
4 Hosoda. If you need to confer with him, I'd like
5 you to finish the question that I've asked, and if
6 you need to take a break or do something, then we
7 can break and you can do that. Do you understand
8 that, sir?

9 A. Yes.

10 Q. Also, in a deposition it's important that
11 only one person talk at a time, the reason being
12 that the court reporter is taking it down in
13 stenographic means, and otherwise she won't be able
14 to do that.

15 If you don't understand a question I ask,
16 please say so. Ask me to rephrase it, and I'll be
17 happy to do that.

18 A. Okay.

19 Q. Is there any reason today that you're not
20 able to give accurate testimony? Medication or
21 anything of that sort?

22 A. No.

23 Q. Prior to the deposition did you review any
24 documents before coming here today?

25 A. Yes.

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1 that Fleming no longer infringed Mr. Berry's
2 software?

3 A. My understanding was that we did have a
4 license to use the original software and that was
5 the intent and it was to go back to that original
6 form of the database.

7 Q. Now, did you make the decision to do that?

8 A. No.

9 Q. Do you know who did?

10 A. No.

11 Q. Do you know how it was communicated to you
12 that there had been a decision to do that?

13 A. Specifically, no, I don't know who told me
14 that, but yes.

15 Q. You believe that was before April 1st?

16 A. The verdict?

17 Q. No. I'm sorry. That the decision to go
18 back to what was -- I believe you used the term
19 original version. I think that's what you said.
20 I'm not trying to misstate it. But if you did say
21 the original version, that decision was prior to
22 April 1st?

23 A. I'm not sure on the date.

24 Q. Were you aware prior to the filing of the
25 Fleming bankruptcy on April 1st, 2003, that Fleming

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1 was going to file bankruptcy?

2 A. No..

3 Q. Is it fair to say that you found out after
4 they filed?

5 A. Yes.

6 Q. Have you ever offered any of the employees
7 that are presently working for you the option of not
8 using any of the software that's subject to this
9 litigation?

10 MR. SMITH: Vague and ambiguous.

11 MR. HOSODA: I join.

12 BY MR. HOGAN:

13 Q. After the jury verdict Fleming did
14 something to the software that was operating in the
15 freight logistics department; is that correct?

16 A. Yes.

17 MR. SMITH: Vague and ambiguous, over
18 broad.

19 MR. HOSODA: I join.

20 BY MR. HOGAN:

21 Q. Did Fleming, to the best of your
22 knowledge, revert to the original license version?

23 A. Yes.

24 Q. Why do you say that?

25 A. Because Mark Dillon, who was my

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1 programmer, took the oldest copy that he had and
2 took out the changes that he had made to get it to
3 that original state.

4 Q. What makes you say that that happened?
5 Why do you believe that?

6 A. Because after that, we had a lot of
7 problems with the database and it was based on
8 taking out the changes that we made to make it work.

9 Q. Did it ever occur to you to contact Wayne
10 Berry to get an actual original copy of the
11 software?

12 A. I wasn't involved in the trial itself and
13 the subsequent decision to go back to the software.
14 So I don't know if I can answer that.

15 MR. HOGAN: Let's mark this as the next in
16 order.

17 (Exhibit 28 marked for identification.)

18 BY MR. HOGAN:

19 Q. Mr. Christensen, you have been handed a
20 document marked for identification as Exhibit 28.
21 Have you ever seen that before?

22 A. Yes.

23 Q. Is that one of the e-mails that you
24 reviewed prior to your deposition?

25 A. Yes.